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13 **UNITED STATES DISTRICT COURT**  
14 **SOUTHERN DISTRICT OF CALIFORNIA**  
15

16 COASTAL ENVIRONMENTAL RIGHTS  
17 FOUNDATION,  
18 a non-profit corporation,  
19  
20 Plaintiff,  
21

22 v.  
23

24 VERIDIAM, INC. a Delaware corporation,  
25  
26 Defendant.  
27  
28

Civil Case No.: '15CV2260 WQHDHB

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF AND  
CIVIL PENALTIES**

**(Federal Water Pollution Control Act,  
33 U.S.C. § 1251 *et seq.*)**

1 Coastal Environmental Rights Foundation, (hereinafter referred to as “CERF” or  
2 “Plaintiff”), by and through its counsel, hereby alleges:

3 **I. JURISDICTION AND VENUE**

4 1. This is a civil suit brought under the citizen suit enforcement provisions of  
5 the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.* (the “Clean Water  
6 Act” or the “CWA”). This Court has subject matter jurisdiction over the parties and this  
7 action pursuant to Section 505(a)(1) of the CWA, 33 U.S.C. § 1365(a)(1), and 28 U.S.C.  
8 § 1331 (an action for declaratory and injunctive relief arising under the Constitution and  
9 laws of the United States).

10 2. On January 27, 2015, CERF issued a 60-day notice letter (“Notice Letter”)  
11 to Veridiam, Inc., (“Veridiam” or “Defendant”) and the County of San Diego  
12 (“County”), regarding their violations of the Clean Water Act, and of CERF’s intention  
13 to file suit against Defendant. The Notice Letter was sent to the registered agent for  
14 Veridiam, C.T. Corporation System, as required by 40 C.F.R. § 135.2(a)(2), the County  
15 Clerk, as well as the Administrator of the United States Environmental Protection  
16 Agency (“EPA”), the Administrator of EPA Region IX, the Executive Director of the  
17 State Water Resources Control Board (“State Board”), and the Executive Officer of the  
18 Regional Water Quality Control Board, San Diego Region (“Regional Board”) as  
19 required by CWA, 33 U.S.C. § 1365(b)(1)(A). A true and correct copy of the Notice  
20 Letter is attached hereto as Exhibit A and incorporated herein.

21 3. More than sixty days has passed since the Notice Letter was served on  
22 Defendant and the State and Federal agencies. Plaintiff is informed and believes, and  
23 thereon alleges, that neither the EPA nor the State of California has commenced or is  
24 diligently prosecuting an action to redress the violations alleged in this complaint. (33  
25 U.S.C. § 1365(b)(1)(B)). This action is not barred by any prior administrative penalty  
26 under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

27 4. Venue is proper in the Southern District of California pursuant to Section  
28 505(c)(1) of the CWA, 33 U.S.C. § 1365(c)(1), because the sources of the violations are

located within this judicial district.

## II. INTRODUCTION

5. This complaint seeks relief for the Defendant's unlawful discharge of pollutants into waters of the United States from its operations at 1717 Cuyamaca Street, El Cajon, California, 92020 ("Veridiam Facility" or "Site"). Specifically, Defendant discharges storm water runoff from the Site into storm drains, Forester Creek, San Diego River, and ultimately the Pacific Ocean (collectively referred to as the "Receiving Waters"). This complaint also seeks relief for Defendant's violations of the filing, monitoring, reporting, discharge and management practice requirements, and other procedural and substantive requirements of California's General Permit for Discharges Associated with Industrial Activities (*National Pollution Discharge Elimination System ("NPDES") General Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 97-03-DWQ, as amended by Order No. 97-03-DWQ*) ("Industrial Permit"). This complaint further seeks relief to prevent discharges in violation of the Industrial Permit as amended by *Order No. 2014-0057-DWQ*. These are ongoing and continuous violations of the Clean Water Act and the Industrial Permit.

6. With every rainfall event, hundreds of millions of gallons of polluted rainwater, originating from industrial operations such as the Veridiam Facility, pours into San Diego storm drain systems, Forester Creek, the San Diego River and ultimately the Pacific Ocean. This discharge of pollutants in storm water from industrial activities such as the Veridiam Facility contributes to the impairment of downstream waters and compromises or destroys their beneficial uses.

## III. PARTIES

### A. Coastal Environmental Rights Foundation

7. Plaintiff CERF is a non-profit public benefit corporation organized under the laws of the State of California.

8. CERF's office is located at 1140 South Coast Highway 101, Encinitas California, 92024.

1           9.       CERF was founded by surfers in North San Diego County and active  
2 throughout California's coastal communities. CERF was established to aggressively  
3 advocate, including through litigation, for the protection and enhancement of coastal  
4 natural resources and the quality of life for coastal residents. One of CERF's primary  
5 areas of advocacy is water quality protection and enhancement.

6           10.      CERF has over 1,000 members who live and/or recreate in and around  
7 Forester Creek, San Diego River, and the Pacific Ocean.

8           11.      Members of CERF use and enjoy the Receiving Waters to fish, sail, boat,  
9 kayak, paddle board, surf, swim, hike, view wildlife, and engage in scientific study  
10 including monitoring activities, among other activities. Defendant discharges pollutants  
11 from the Sites to the Receiving Waters used by CERF's members. Thus, Defendant's  
12 discharge of pollutants impairs CERF's members' uses and enjoyment of the Receiving  
13 Waters.

14          12.      The interests of CERF's members have been, are being, and will continue  
15 to be adversely affected by the Defendant's failure to comply with the Clean Water Act  
16 and the Industrial Permit. The relief sought herein will redress the harms to Plaintiff  
17 caused by Defendant's activities. Continuing commission of the acts and omissions  
18 alleged above will irreparably harm Plaintiff's members, for which harm they have no  
19 plain, speedy or adequate remedy at law.

20           **B.    The Veridiam Facility Owners and/or Operators**

21          13.      CERF is informed and believes that Veridiam, Inc. is a private corporation  
22 organized under the laws of the State of Delaware, and is located in El Cajon,  
23 California.

24          14.      CERF is informed and believes, and thereon alleges that the County of San  
25 Diego is current owner of the property located at 1717 Cuyamaca Street, El Cajon,  
26 California, 92020 ("Property"). CERF is informed and believes, and thereon alleges,  
27 Veridiam, Inc. leases a portion of the Property from County.

28    /././

#### IV. STATUTORY BACKGROUND

##### A. The Clean Water Act

15. Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant into waters of the United States unless the discharge complies with various enumerated sections of the CWA. Among other things, Section 301(a) prohibits discharges not authorized by, or in violation of, the terms of an NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

16. Section 402(p) of the CWA establishes a framework for regulating municipal and industrial storm water discharges under the NPDES program. (33 U.S.C. § 1342(p)). States with approved NPDES permit programs are authorized by Section 402(b) to regulate industrial storm water discharges through individual permits issued to dischargers and/or through the issuance of a single, statewide general permit applicable to all industrial storm water dischargers. (33 U.S.C. § 1342).

17. Section 402(b) of the CWA allows each state to administer its own EPA-approved permit for storm water discharges. (33 U.S.C. § 1342(b)). In California, the State Board is charged with regulating pollutants to protect California's water resources.

18. The Industrial Permit is a statewide general NPDES permit issued by the State Board pursuant to Section 402 of the CWA that regulates the discharge of pollutants from industrial sites. (33 U.S.C. § 1342).

19. Section 505(a)(1) of the CWA provides for citizen enforcement actions against any "person" who is alleged to be in violation of an "effluent standard or limitation... or an order issued by the Administrator or a State with respect to such a standard or limitation." (33 U.S.C. § 1365(a)(1)).

20. An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a).

21. Each separate violation of the Clean Water Act subjects the violator to a penalty of up to \$37,500 per day per violation for all violations occurring after January 27, 2009. (33 U.S.C. § 1319(d); Adjustment of Civil Monetary Penalties for Inflation,



1 40 C.F.R. §19.4).

2 22. Section 505(d) of the Clean Water Act permits prevailing parties to  
3 recover costs, including attorneys' and experts' fees. (33 U.S.C. § 1365(d)).

4 **B. California's Industrial Permit**

5 23. The Industrial Permit, NPDES General Permit No. CAS000001, Water  
6 Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ and Order No.  
7 2014-0057-DWQ is an NPDES permit adopted pursuant to Section 402 of the CWA, 33  
8 U.S.C. § 1342(b) and 40 C.F.R § 123.25. In order to discharge storm water lawfully in  
9 California, industrial dischargers must secure coverage under the Industrial Permit and  
10 comply with its terms, or obtain and comply with an individual NPDES permit. The  
11 Industrial Permit as amended pursuant to Order No. 2014-0057-DWQ, became effective  
12 July 1, 2015 ("New Industrial Permit").

13 24. Failure to comply with the Industrial Permit or New Industrial Permit  
14 constitutes a Clean Water Act violation. (Industrial Permit, § C.1; New Industrial Permit  
15 §XXI.A.).

16 25. Discharge Prohibitions A(1) of the Industrial Permit and III.B. of the New  
17 Industrial Permit prohibit the direct or indirect discharge of materials other than storm  
18 water ("non-storm water discharges"), which are not otherwise regulated by an NPDES  
19 permit, to the waters of the United States. Discharge Prohibition A(2) of the Industrial  
20 Permit and III.C. of the New Industrial Permit prohibit storm water discharges and  
21 authorized non-storm water discharges which cause or threaten to cause pollution,  
22 contamination, or nuisance.

23 26. Effluent limitations B(3) of the Industrial Permit and V.A. of the New  
24 Industrial Permit require facility operators to reduce or prevent pollutants associated  
25 with industrial activity in storm water discharges and authorized non-storm water  
26 discharges through the implementation of Best Available Technology Economically  
27 Achievable ("BAT") for toxic pollutants and Best Conventional Pollutant Control  
28 Technology ("BCT") for conventional pollutants.

1           27.       Industrial Permit Receiving Water Limitation C(1) and New Industrial  
2 Permit Receiving Water Limitation VI.B. prohibit storm water discharges and  
3 authorized non-storm water discharges to surface or groundwater that adversely impacts  
4 human health or the environment.

5           28.       Industrial Permit Receiving Water Limitation C(2) and New Industrial  
6 Permit Receiving Water Limitation VI.A. prohibit storm water discharges and  
7 authorized non-storm water discharges that cause or contribute to an exceedance of an  
8 applicable water quality standard in a Statewide Water Quality Control Plan or the  
9 applicable Regional Board's Basin Plan.

10          29.       Section A(1) and Provision E(2) of the Industrial Permit require  
11 dischargers to have developed and implemented a Storm Water Pollution Prevention  
12 Plan ("SWPPP") by October 1, 1992, or prior to beginning industrial activities, that  
13 meets all the requirements of the Industrial Permit. Sections X.A. and B. of the New  
14 Industrial Permit require development and implementation of site-specific SWPPPs by  
15 July 1, 2015 or upon commencement of industrial activity.

16          30.       The objective of the SWPPP is to identify and evaluate sources of  
17 pollutants associated with industrial activities that may affect the quality of storm water  
18 discharges from the Sites, and identify and implement site-specific Best Management  
19 Practices ("BMPs") to reduce or prevent pollutants associated with industrial activities  
20 in storm water discharges. (Industrial Permit, Section A(2); New Industrial Permit,  
21 Section X.C.1).

22          31.       To ensure its effectiveness, the SWPPP must be evaluated on an annual  
23 basis, and it must be revised as necessary to ensure compliance with the Permit.  
24 (Industrial Permit, Sections A(9), (10); New Industrial Permit, Sections XA. And  
25 X.B.1.).

26          32.       Sections A(3) through A(10) of the Industrial Permit and Sections X.A to  
27 X.I. of the New Industrial Permit set forth the requirements for a SWPPP.

28          33.       The SWPPP must include a site map showing the facility boundaries,

1 storm water drainage areas with flow patterns, nearby water bodies, the location of the  
2 storm water collection, conveyance and discharge system, structural control measures,  
3 areas of actual and potential pollutant contact, and areas of industrial activity. (Industrial  
4 Permit, Section A(4); New Industrial Permit, Section X.E.).

5 34. Dischargers are also required to prepare and implement a monitoring and  
6 reporting program ("M&RP"). (Industrial Permit, Sections E(3), B(1); New Industrial  
7 Permit, Section XI).

8 35. The objective of the M&RP is to ensure that storm water discharges are in  
9 compliance with the Industrial Permit (up to July 1, 2015) and New Industrial Permit  
10 (July 1, 2015 and thereafter) Discharge Prohibitions, Effluent Limitations, and  
11 Receiving Water Limitations. (Industrial Permit, Section B(2); New Industrial Permit,  
12 Finding J.56).

13 36. The Industrial Permit and New Industrial Permit require dischargers to  
14 conduct visual observations for the presence of unauthorized non-storm water  
15 discharges on a quarterly basis, to document the source of any discharge, and to report  
16 the presence of any discolorations, stains, odors, and floating materials in the discharge.

17 37. The Industrial Permit and New Industrial Permit require dischargers to  
18 visually observe storm water discharges at all discharge locations from one storm event  
19 per month during the wet season (October 1 - May 30) and to document the presence of  
20 any floating and suspended materials, oil and grease, discolorations, turbidity, or odor in  
21 the discharge, and the source of any pollutants.

22 38. Both the Industrial Permit and New Industrial Permit require dischargers  
23 to maintain records of observations, observation dates, locations observed, and  
24 responses taken to eliminate unauthorized non-storm water discharges and to reduce or  
25 prevent pollutants from contacting non-storm water and storm water discharges.

26 39. The Industrial Permit requires dischargers to collect a sample from all  
27 discharge points during the first storm event of the wet season and during at least one  
28 other storm event of the wet season, for a total of two samples per wet season.



(Industrial Permit, Section (B)(5)). The New Industrial permit requires dischargers to collect and analyze storm water samples from two storm events with the first half of each reporting year (July 1 to December 31) and two from the second half (January 1 to June 30). (New Industrial Permit, Section XI.B.2.).

40. Dischargers must analyze each sample for pH, total suspended solids, oil and grease, and for toxic chemicals and other pollutants likely to be present in significant quantities in the storm water discharged from the facility. (Industrial Permit, Section B(5)(c); New Industrial Permit, Section XI.B.6).

41. Dischargers must submit "Annual Reports" to the Regional Board in July of each year. (Industrial Permit, Section B(14); New Industrial Permit, Section XVI.A.).

## **V. STATEMENT OF FACTS**

### **A. Veridiam Facility**

42. CERF is informed, believes, and thereon alleges the Veridiam Facility is in the business of fabricating metals for medical, aerospace, defense, nuclear power, aircraft engines, electronics, and gas industries. The Veridiam Facility belongs to Sector AA of the Industrial Permit and its standard industrial classification (SIC) code is 3499.

43. CERF is informed, believes, and thereon alleges the Veridiam Facility manufactures specialty metal products using raw material steels and non-ferrous alloys.

44. CERF is informed, believes, and thereon alleges the Site is comprised of a main two-story building and several smaller single-story buildings. CERF is informed, believes, and thereon alleges the Site is approximately 311,715 square feet and is comprised of several areas serving unique functions. The acid neutralization area contains acid and base solutions along with tanks of rinse water. The solutions also contain various concentrations of metals from the parts processed.

45. CERF is informed, believes, and thereon alleges hazardous materials, including flammable liquids, acids, caustic solutions and toxic chemicals are received in various containers including 55-gallon drums and may be stored outdoors.

46. CERF is informed, believes, and thereon alleges metal parts come in

1 contact with a variety of chemicals including organic solvents such as toluene, and  
2 various acids and caustic solutions and deionized water. The metal parts are also  
3 machined and ground into fine metal dust and turnings.

4 47. CERF is informed, believes, and thereon alleges some raw materials,  
5 including metal alloys, and finished products are stored outdoors with exposure to storm  
6 water.

7 48. CERF is informed, believes, and thereon alleges that storm water is  
8 conveyed from the northern part of the Site to the south and east.

9 49. The Veridiam Facility discharges into storm drains that discharge into  
10 Forester Creek, downstream to the San Diego River, and ultimately the Pacific Ocean.

11 50. The EPA promulgated regulations for the Section 402 NPDES permit  
12 program defining waters of the United States. (*See* 40 C.F.R. § 122.2). The EPA  
13 interprets waters of the United States to include not only traditionally navigable waters  
14 but also other waters, including waters tributary to navigable waters, wetlands adjacent  
15 to navigable waters, and other waters including intermittent streams that could affect  
16 interstate commerce. The CWA requires any person who discharges or proposes to  
17 discharge pollutants into waters of the United States to submit an NPDES permit  
18 application. (40 C.F.R. § 122.21).

19 51. The Clean Water Act confers jurisdiction over non-navigable waters that  
20 are tributary to traditionally navigable waters where the non-navigable water at issue  
21 has a significant nexus to the navigable water. (*See Rapanos v. United States*, 547 U.S.  
22 715 (2006)). A significant nexus is established if the “[receiving waters], either alone or  
23 in combination with similarly situated lands in the region, significantly affect the  
24 chemical, physical, and biological integrity of other covered waters.” (*Id.* at 780).

25 52. A significant nexus is also established if waters that are tributary to  
26 navigable waters have flood control properties, including functions such as the  
27 reduction of flow, pollutant trapping, and nutrient recycling. (*Id.* at 783).

28 53. Information available to CERF indicates that each of the surface waters

1 into which the Veridiam Facility discharges polluted storm water are tributaries to  
2 traditional navigable waters, such as the San Diego River and the Pacific Ocean.

3 54. CERF is informed and believes, and thereon alleges the Veridiam  
4 Facility's polluted discharges cause and/or contribute to the impairment of water quality  
5 in Forester Creek. Elevated levels of total dissolved solids have resulted in the inability  
6 of the Forester Creek to support its beneficial uses.

7 55. Water Quality Standards are pollutant concentration levels determined by  
8 the State Board and the EPA to be protective of the beneficial uses of the receiving  
9 waters. Discharges above Water Quality Standards contribute to the impairment of the  
10 receiving waters' beneficial uses.

11 56. The applicable Water Quality Standards include, but are not limited to,  
12 those set out by the State of California in the Criteria for Priority Toxic Pollutants, 40  
13 C.F.R. § 131.38, ("California Toxics Rule" or "CTR") and in the Basin Plan. The CTR  
14 limits are, in part, as follows: lead – .065 milligrams per liter (mg/L); copper – .013  
15 mg/L; zinc – .12 mg/L. These numeric criteria are set to protect human health and the  
16 environment in the State of California. The CTR limits represented are the maximum  
17 concentration levels permissible to achieve health and environmental protection goals.

18 57. EPA Benchmarks are the pollutant concentrations above which EPA has  
19 determined are indicative of a facility not successfully developing or implementing  
20 BMPs that meet BAT for toxic pollutants and BCT for conventional pollutants. (See  
21 Multi-Sector General Permits for Stormwater Discharges Associated with Industrial  
22 Activity (MSGP), 2015, §§6.2.1, 8.AA, Table 8.AA-1). The benchmark values provide  
23 an appropriate level to determine whether a facility's storm water pollution prevention  
24 measures are successfully implemented. (MSGP Fact Sheet, p. 52). Failure to conduct  
25 and document corrective action and revision of control measures in response to  
26 benchmark exceedances constitutes a permit violation. (*Id.*, at p. 65).

27 58. EPA has established the following benchmark values for Sector AA,  
28 Subsector AA1, Fabricated Metal Products, except coating: iron – 1.0 mg/L; aluminum

0.75 mg/L; zinc<sup>1</sup> – 0.04-.26 mg/L; nitrate plus nitrite nitrogen – 0.068 mg/L. (MSGP, §8.AA.5, Table 8.AA-1).

59. The Regional Board's Basin Plan establishes water quality objectives, implementation plans for point and nonpoint source discharges, and prohibitions, and furthers statewide plans and policies intended to preserve and enhance the beneficial uses of all waters in the San Diego region. (*See* Basin Plan at 1-1). The Basin Plan identifies several beneficial uses for regional waters, including for Forester Creek. The Basin Plan establishes the following water quality objectives for the San Diego Hydrologic Unit: pH – not less than 6.5 and not greater than 8.5.

#### **B. Past and Present Industrial Activity at the Veridiam Facility**

60. CERF is informed, believes, and thereon alleges that in its Notice of Intent to Obtain Coverage under Industrial Permit submitted to the Regional Board, the Defendant list its operations as Standard Industrial Classification ("SIC") code 3499 for facilities primarily engaged in fabricated metal products ("Fabricated Metal Products").

61. CERF is informed, believes, and thereon alleges that the Defendant engages in manufacturing specialty metal products using raw material steels and non-ferrous alloys.

62. The potential pollutant sources associated with the industrial activities at the Veridiam Facility include, but are not limited to: equipment and machinery storage areas, which may contribute rust and/or oils; garnet sand from the blasting of parts, accumulating at the base of the machine and on the driveway near the machine shop; loading and unloading operations for paints, chemicals, and raw materials; outdoor storage activities for raw materials, paints, empty containers, corn cobs, chemicals, and scrap metals; outdoor manufacturing or processing activities such as grinding, cutting, degreasing, buffing, and brazing; onsite waste disposal practices for spent solvents, sludge, pickling baths, shavings, ingot pieces, and refuse and waste piles.

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<sup>1</sup> The zinc benchmark is dependent on water hardness.



63. CERF is informed, believes, and thereon alleges that pollutants present in storm water discharged from the Veridiam Facility therefore include but are not limited to: toxic metals such as copper, iron, zinc, lead, and aluminum; petroleum products including oil, fuel, grease, transmission fluids, brake fluids, hydraulic oil and diesel fuel; chemical admixtures, acids and solvents; total suspended solids and pH-affecting substances; and fugitive and other dust, dirt and debris.

64. Based upon CERF's investigation, CERF is informed and believes and thereon alleges Defendant stores metal and other materials outside where it is exposed to storm water.

65. CERF is informed and believes and thereon alleges that there are drums and other containers stored on-Site that are uncovered and/or uncontained.

66. CERF is informed and believes and thereon alleges that several drains at the Veridiam Facility convey storm water pollution off the site and into area storm drains and the Forester Creek drainage channel.

67. CERF is informed and believes that the Veridiam Facility lacks effective BMPs to control the flow of storm water from the Facility into the Forester Creek drainage channel. As a result, nitrates, metal particles, and other pollutants have been and continue to be conveyed from the Veridiam Facility into the Forester Creek drainage channel.

68. As a result, CERF is informed and believes and thereon alleges that during rain events at the Veridiam Facility, storm water carries pollutants from the outdoor storage areas, bins and dumpsters, floor contaminants, equipment, uncontained metal drums, and other sources directly into the storm drains and Forester Creek drainage channel.

69. CERF is informed and believes and thereon alleges that the Veridiam Facility pollution control measures are ineffective in controlling the exposure of pollutant sources to storm water at the Veridiam Facility.

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**C. The Veridiam Facility and its Associated Discharge of Pollutants**

70. CERF is informed, believes, and thereon alleges that with every significant rain event, the Veridiam Facility discharges polluted storm water from the industrial activities at the facility via the City of San Diego's storm drain system and into the Receiving Waters.

71. CERF is informed, believes, and thereon alleges that the Receiving Waters into which the Veridiam Facility discharges polluted storm water are waters of the United States and therefore the Industrial Permit properly regulates discharges to those waters.

72. Because discharges from the Veridiam Facility contain metals and, the Veridiam Facility's polluted discharges cause and/or contribute to the impairment of water quality in the Receiving Waters.

73. CERF is informed, believes, and thereon alleges that the storm water discharged from the Veridiam Facility has exceeded the CTR Water Quality Standards applicable to zinc in California. For example, Defendant's 2008-2009 annual report monitoring data indicates levels of zinc as high as 19.0 mg/L which is over 150 times the CTR limit of .12 mg/L and over 140 times the EPA Benchmark value for zinc of .13 mg/L.<sup>2</sup> (MSGP, §8.AA.5, Table 8.AA.-1).

74. More recently, Defendant's 2011-2012 and 2013-2014 monitoring data also indicates high levels of zinc, with exceedances ranging from .166 to 2.44 mg/L.

75. CERF is informed, believes, and thereon alleges that the storm water discharged from the Veridiam Facility has also exceeded the EPA Benchmark value for aluminum. For example, Defendant's 2008-2009 annual report monitoring data indicates exceedance levels of aluminum at 8.72 and 8.22 mg/L, which are over ten times the EPA Benchmark value for aluminum of .75 mg/L. (MSGP, §8.AA.5, Table 8.AA.-1).

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<sup>2</sup> This benchmark value is hardness-dependent. Assuming the 100-125 mg/L water hardness range applies, the benchmark is .13 mg/L.

1        76. More recently, Defendant's 2011-2012 monitoring data indicated  
2 aluminum exceedance levels of .89 and 1.03.

3        77. CERF is informed, believes, and thereon alleges that the storm water  
4 discharged from the Veridiam Facility has exceeded the EPA Benchmark value for  
5 nitrate plus nitrite nitrogen. For example, Defendant's annual report monitoring data  
6 indicates exceedance levels of nitrate plus nitrite nitrogen ranging from .7 to 3.34 mg/L  
7 for the last four years, and as high as 19.1 mg/L for the 2008-2009 reporting period. The  
8 EPA benchmark value for nitrate plus nitrite nitrogen is 0.68 mg/L. (MSGP, §8.AA.5,  
9 Table 8.AA.-1).

10       78. CERF is informed, believes, and thereon alleges that storm water  
11 discharged from the Veridiam Facility has also exceeded the San Diego Basin Plan  
12 Water Quality Objective for hydrogen ion concentration (pH). For inland surface  
13 waters, the pH Water Quality Objective is a range, from 6.5 to 8.5. Storm water  
14 discharged from the Veridiam Facility has historically failed to meet the minimum  
15 threshold of 6.5. For example, during the 2008-2009 reporting year, Defendant's  
16 monitoring data indicated a pH as low as 4.0. During the 2011-2012 and 2013-2014  
17 reporting years, pH exceedances ranged from 5.99 to 6.38.

18       79. CERF is informed, believes, and thereon alleges that during every  
19 significant rain event that has occurred at the Veridiam Facility since January 27, 2010  
20 through the present, Defendant has discharged and continues to discharge storm water  
21 from the Veridiam Facility that contains pollutants at levels in violation of the  
22 prohibitions and limitations set forth in the Industrial Permit and other applicable Water  
23 Quality Standards.

24       80. CERF is informed, believes, and thereon alleges, from visual observations,  
25 sample results, and investigations available to CERF, the Defendant has failed and  
26 continues to fail to develop and/or implement adequate BMPs to prevent the discharge  
27 of polluted storm water from the Veridiam Facility. The inadequacy of the BMPs at the  
28 Veridiam Facility is a result of the Defendant's failure to develop and implement an

adequate SWPPP and companion M&RP for this Site. Therefore, storm water discharges from the Veridiam Facility contain pollutant concentration levels that are above both EPA Benchmarks and applicable Water Quality Standards.

81. CERF is informed, believes, and thereon alleges that since at least January 27, 2010 through the present, Defendant has failed to develop and implement BMPs that meet the standards of BAT/BCT at the Veridiam Facility in violation of Effluent Limitation B(3) of the Industrial Permit. Each day that Defendant has failed and continues to fail to implement adequate BMPs to achieve BAT/BCT constitutes a separate violation of the Industrial Permit and the CWA.

82. Based on its investigation of the Veridiam Facility, CERF is informed and believes that Defendant has failed to develop and implement an adequate SWPPP since at least January 27, 2010 through the present. Each day that Defendant has failed and continues to fail to implement an adequate SWPPP constitutes a separate violation of the Industrial Permit and the CWA.

83. CERF is informed and believes that Defendant has failed to submit written reports to the Regional Board identifying additional BMPs necessary to achieve BAT/BCT at the Veridiam Facility since at least January 27, 2010, in violation of Receiving Water Limitations C(3) and C(4) of the Industrial Permit and New Industrial Permit Receiving Water Limitation VI.A. Each day that Defendant has operated the Veridiam Facility without meeting this reporting requirement of the Industrial Permit constitutes a separate violation of the Industrial Permit and the CWA.

#### **D. Defendant's Monitoring Program**

84. The Veridiam Facility is required to sample at least two storm events every rainy season in accordance with the sampling and analysis procedures set forth at Industrial Permit Section B(5). These procedures require that a sample be taken from all discharge locations at the Veridiam Facility and that at least two samples are taken during the wet season: (1) one in the first storm event of a particular wet season; and (2) at least one other storm event in the wet season. (Industrial Permit, Sections B(5) and



1 B(7)).

2 85. CERF is informed and believes that despite the extremely high levels of  
3 pollutants reported in the samples that were taken at the Veridiam Facility, the  
4 Defendant has not sampled as required.

5 86. CERF is informed and believes that Defendant has not successfully  
6 sampled and reported during the 2009-2010, 2012-2013, and 2013-2014 reporting years  
7 by failing to sample the required two storm events, despite there being numerous rain  
8 events sufficient to generate runoff occurring during the business hours at the Veridiam  
9 Facility.

10 87. Information available to Plaintiff indicates that Defendant has not  
11 submitted any reports pursuant to Receiving Water Limitation C(4)(a) within 60-days of  
12 becoming aware of levels in its storm water exceeding the EPA Benchmark values or  
13 applicable Water Quality Standards, or filed any reports describing the Veridiam  
14 Facility's noncompliance with the Industrial Permit pursuant to Section C(11)(d) of the  
15 Industrial Permit.

## 16 VI. CLAIMS FOR RELIEF

### 17 FIRST CAUSE OF ACTION

#### 18 **Discharges of Contaminated Storm Water in** 19 **Violation of the Industrial Permit's Discharge Prohibitions and** 20 **Receiving Water Limitations and the Clean Water Act** **(Violations of 33 U.S.C. §§ 1311(a), 1342)**

21 88. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.

22 89. Plaintiff is informed and believes, and thereon alleges, that as a result of  
23 the operations at the Veridiam Facility, during every significant rain event, storm water  
24 containing pollutants harmful to fish, plant, bird life, and human health is discharged  
25 from the Veridiam Facility to the Receiving Waters.

26 90. Plaintiff is informed and believes, and thereon alleges, that the  
27 Defendant's discharges of contaminated storm water have caused and continue to cause  
28 pollution, contamination, and/or nuisance to the waters of the United States in violation

1 of Discharge Prohibition A(2) of the Industrial Permit and Section VI.C of the New  
2 Industrial Permit.

3 91. Plaintiff is informed and believes, and thereon alleges, that these  
4 discharges of contaminated storm water have, and continue to, adversely affect human  
5 health and the environment in violation of Receiving Water Limitation C(1) of the  
6 Industrial Permit and Section VI.B. of the New Industrial Permit.

7 92. Plaintiff is informed and believes, and thereon alleges, that these  
8 discharges of contaminated storm water have caused or contributed to and continue to  
9 cause or contribute to an exceedance of Water Quality Standards in violation of  
10 Receiving Water Limitation C(2) of the Industrial Permit and VI.A. of the New  
11 Industrial Permit.

12 93. Plaintiff is informed and believes, and thereon alleges, that from at least  
13 January 27, 2010 through the present, Defendant has discharged, and continues to  
14 discharge, contaminated storm water from the Veridiam Facility to Receiving Waters in  
15 violation of the prohibitions of the Industrial Permit. Thus, Defendant is liable for civil  
16 penalties for at least 37 violations of the Industrial Permit and the CWA.

17 94. Plaintiff is informed and believes, and thereon alleges, that Defendant's  
18 violations of the Industrial Permit and the CWA are ongoing.

19 95. Defendant will continue to be in violation of the Industrial Permit  
20 requirements each day the Veridiam Facility discharges contaminated storm water in  
21 violation of Industrial Permit prohibitions.

22 96. Every day that Defendant has discharged and/or continues to discharge  
23 polluted storm water from the Veridiam Facility in violation of the Industrial Permit is a  
24 separate and distinct violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

25 97. By committing the acts and omissions alleged above, Defendant is subject  
26 to an assessment of civil penalties for each and every violation of the CWA occurring  
27 from January 27, 2010 to the present pursuant to Sections 309(d) and 505 of the CWA,  
28 33 U.S.C. §§ 1319(d) and 1365, and the Adjustment of Civil Monetary Penalties for

1 Inflation, 40 C.F.R. §12.4.

2 98. An action for injunctive relief under the CWA is authorized by 33 U.S.C.  
3 § 1365(a). Continuing commission of the acts and omissions alleged above would  
4 irreparably harm Plaintiff and the citizens of the State of California, for which harm  
5 they have no plain, speedy, or adequate remedy at law.

6 Wherefore, Plaintiff prays judgment against Defendant as set forth hereafter.

7  
8 **SECOND CAUSE OF ACTION**

9 **Failure to Develop and/or Implement BMPs that Achieve Compliance with Best**  
10 **Available Technology Economically Achievable and Best Conventional Pollutant**  
11 **Control Technology In Violation of the Industrial Permit and the Clean Water Act**  
12 **(Violations of 33 U.S.C. §§1311, 1342)**

13 99. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.

14 100. Plaintiff is informed and believes, and thereon alleges that Defendant has  
15 failed to develop and/or implement BMPs that achieve compliance with BAT/BCT  
16 requirements of the Industrial Permit and the CWA.

17 101. Sampling of the Veridiam Facility's storm water discharges as well as  
18 CERF's observations and local agency inspections of the Veridiam Facility demonstrate  
19 that Defendant has not developed and has not implemented BMPs that meet the  
20 standards of BAT/BCT. Thus, Defendant is in violation of Effluent Limitations of the  
21 Industrial Permit and New Industrial Permit.

22 102. Plaintiff is informed and believes and thereon alleges that Defendant has  
23 been in daily and continuous violation of the BAT/BCT requirements of the Industrial  
24 Permit and the CWA every day since at least January 27, 2010, and of the BAT/BCT  
25 requirements of the New Industrial Permit since July 1, 2015.

26 103. Plaintiff is informed and believes and thereon alleges that Defendant's  
27 violations of the Effluent Limitations and the CWA are ongoing.

28 104. Defendant will continue to be in violation every day the Veridiam Facility  
operates without adequately developing and/or implementing BMPs that achieve  
BAT/BCT to prevent or reduce pollutants associated with industrial activity in storm

1 water discharges at the Veridiam Facility.

2 105. Every day that Defendant operates the Veridiam Facility without  
3 adequately developing and/or implementing BMPs that achieve BAT/BCT in violation  
4 of the Industrial Permit or New Industrial Permit is a separate and distinct violation of  
5 Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

6 106. By committing the acts and omissions alleged above, Defendant is subject  
7 to an assessment of civil penalties for each and every violation of the CWA occurring  
8 from January 27, 2010 to the present pursuant to Sections 309(d) and 505 of the CWA,  
9 33 U.S.C. §§ 1319(d) and 1365, and the Adjustment of Civil Monetary Penalties for  
10 Inflation, 40 C.F.R. §12.4.

11 107. An action for injunctive relief under the CWA is authorized by 33 U.S.C.  
12 § 1365(a). Continuing commission of the acts and omissions alleged above would  
13 irreparably harm Plaintiff and the citizens of the State of California, for which harm  
14 they have no plain, speedy, or adequate remedy at law.

15 Wherefore, Plaintiff prays judgment against Defendant as set forth hereafter.

16 **THIRD CAUSE OF ACTION**

17 **Failure to Develop and/or Implement an Adequate**  
18 **Storm Water Pollution Prevention Plan**  
19 **in Violation of the Industrial Permit and Clean Water Act**  
**(Violations of 33 U.S.C. §§ 1311, 1342)**

20 108. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.

21 109. Plaintiff is informed and believes, and thereon alleges that Defendant has  
22 failed to develop and/or implement an adequate SWPPP for the Veridiam Facility that  
23 meets the requirements set out in Section A and Provision E of the Industrial Permit and  
24 Section X of the New Industrial Permit.

25 110. Defendant has been in violation of the SWPPP requirements every day  
26 since at least January 27, 2010.

27 111. Defendant's violations of the Industrial Permit, New Industrial Permit and  
28



the CWA are ongoing.

112. Defendant will continue to be in violation of the SWPPP requirements every day the Veridiam Facility operates with an inadequately developed and/or implemented SWPPP for the Veridiam Facility.

113. Each day that Defendant operates the Veridiam Facility without developing and/or implementing an adequate SWPPP is a separate and distinct violation of Section 301(a) of the CWA 33 U.S.C. §1311(a).

114. By committing the acts and omissions alleged above, Defendant is subject to an assessment of civil penalties for each and every violation of the CWA occurring from January 27, 2010 to the present pursuant to Sections 309(d) and 505 of the CWA, 33 U.S.C. §§ 1319(d) and 1365, and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. §12.4.

115. An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above would irreparably harm Plaintiff and the citizens of the State of California, for which harm they have no plain, speedy, or adequate remedy at law.

Wherefore, Plaintiff prays judgment against Defendant as set forth hereafter.

#### **FOURTH CAUSE OF ACTION**

##### **Failure to Implement an Adequate Monitoring and Reporting Program In Violation of the Industrial Permit and the Clean Water Act (Violations of 33 U.S.C. §§ 1311, 1342)**

116. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.

117. Plaintiff is informed and believes, and thereon alleges that Defendant has failed to develop and/or implement an adequate M&RP for the Veridiam Facility as required by Section B and Provision E(3) of the Industrial Permit and Section XI of the New Industrial Permit.

118. Plaintiff is informed and believes, and thereon alleges, that conditions at the Veridiam Facility, as determined via sampling of storm water discharges from the

1 Veridiam Facility, and the annual reports submitted by Defendant all demonstrate that  
2 the Veridiam Facility has not implemented an adequate M&RP that meets the  
3 requirements of the Industrial Permit and New Industrial Permit.

4 119. Plaintiff is informed and believes, and thereon alleges that Defendant has  
5 failed and continues to fail to collect samples from all discharge points during all storm  
6 events in violation of Section B(5) of the Industrial Permit.

7 120. Plaintiff is informed and believes, and thereon alleges that Defendant has  
8 failed and continues to fail to identify inadequacies in its SWPPP and BMPs.

9 121. Defendant's violations of the Industrial Permit, New Industrial Permit and  
10 the CWA are ongoing.

11 122. Defendant will continue to be in violation of the Industrial Permit, New  
12 Industrial Permit and the CWA each day the Veridiam Facility operates with an  
13 inadequately implemented M&RP.

14 123. Each day Defendant operates the Veridiam Facility without implementing  
15 an adequate M&RP for the Veridiam Facility is a separate and distinct violation of  
16 Section 301(a) of the CWA, 33 U.S.C. §1311(a).

17 124. By committing the acts and omissions alleged above, Defendant is subject  
18 to an assessment of civil penalties for each and every violation of the CWA occurring  
19 from January 27, 2010 to the present pursuant to Sections 309(d) and 505 of the CWA,  
20 33 U.S.C. §§ 1319(d) and 1365, and the Adjustment of Civil Monetary Penalties for  
21 Inflation, 40 C.F.R. §12.4.

22 125. An action for injunctive relief under the CWA is authorized by 33 U.S.C.  
23 § 1365(a). Continuing commission of the acts and omissions alleged above would  
24 irreparably harm Plaintiff and the citizens of the State of California, for which harm  
25 they have no plain, speedy, or adequate remedy at law.

26 Wherefore, Plaintiff prays judgment against Defendant as set forth hereafter.

27 ///  
28 ///

**FIFTH CAUSE OF ACTION**

**Failure to Conduct Required Rain Event Sampling in  
Violation of the Industrial Permit**

126. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.

127. Plaintiff is informed and believes, and thereon alleges, that Defendant is in violation of Industrial Permit Section B(7) and B(5) by failing to collect at least two samples of storm water runoff, including one set of samples during the first storm event of the wet season.

128. Plaintiff is informed and believes, and thereon alleges, that Defendant failed to collect two samples during the 2009-2010, 2012-2013, and 2013-2014 wet seasons.

129. Information available to CERF indicates that there were numerous qualifying rain events during the 2009, 2010, 2012, 2013 and 2014 wet seasons.

130. Defendant has been in violation of the Industrial Permit and the CWA for each day the Veridiam Facility operates without sampling as required by the Industrial Permit.

131. By committing the acts and omissions alleged above, Defendant is subject to an assessment of civil penalties for each and every violation of the CWA occurring from January 27, 2010 to the presents, pursuant to Sections 309(d) and 505 of the CWA, 33 U.S.C. §§1319(d) and 1365, and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. §12.4.

132. An action for injunctive relief under the CWA is authorized by 33 U.S.C. §1365(a). Continuing commission of the omissions alleged above would irreparably harm the Plaintiff and the citizens of the State of California, for which harm they have no plain, speedy, or adequate remedy at law.

Wherefore, Plaintiff prays judgment against Defendant as set forth hereafter.

**SIXTH CAUSE OF ACTION**

**Failure to Submit Reports in  
Violation of the Industrial Permit**

133. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.

1           134. Plaintiff is informed and believes, and thereon alleges, that Defendant's  
2 annual reports did not meet the monitoring and reporting requirements of the Industrial  
3 Permit in violation of Section B(13) and B(14) of the Industrial Permit.

4           135. Plaintiff is informed and believes, and thereon alleges, that the  
5 Defendant's annual reports were inaccurate and stated that the SWPPP's BMPs address  
6 existing potential pollutant sources when they did not, in violation of the Industrial  
7 Permit Section B.

8           136. Plaintiff is informed and believes, and thereon alleges, that Defendant's  
9 annual reports were false and stated that the SWPPP was up to date when it was not, in  
10 violation of Section B of the Industrial Permit.

11           137. Plaintiff is informed and believes, and thereon alleges, that Defendant  
12 failed to submit a written report identifying what additional BMPs will be implemented  
13 to achieve Water Quality Standards even though Defendant discharge exceeded  
14 receiving Water Quality Standards, in violation of Receiving Water Limitations C(3)  
15 and C(4) of the Industrial Permit.

16           138. Defendant has been in violation each day the Veridiam Facility operates  
17 without reporting as required by the Industrial Permit.

18           139. Defendant's violations of the Industrial Permit and the CWA are ongoing.

19           140. Every day Defendant operates the Veridiam Facility without reporting as  
20 required by the Industrial Permit is a separate and distinct violation of the Industrial  
21 Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a).

22           141. Defendant has been in daily and continuous violation of the Industrial  
23 Permit's reporting requirements every day since at least January 27, 2010.

24           142. By committing the acts and omissions alleged above, Defendant is subject  
25 to an assessment of civil penalties for each and every violation of the CWA occurring  
26 from January 27, 2010 to the present pursuant to Sections 309(d) and 505 of the CWA,  
27 33 U.S.C. §§ 1319(d) and 1365, and the Adjustment of Civil Monetary Penalties for  
28 Inflation, 40 C.F.R. §12.4.



1        143. An action for injunctive relief under the CWA is authorized by 33 U.S.C.  
 2        § 1365(a). Continuing commission of the acts and omissions alleged above would  
 3        irreparably harm Plaintiff and the citizens of the State of California, for which harm  
 4        they have no plain, speedy, or adequate remedy at law.

5        Wherefore, Plaintiff prays judgment against Defendant as set forth hereafter.

6        **VII. RELIEF REQUESTED**

7        144. Wherefore, Plaintiff respectfully requests that this Court grant the  
 8        following relief:

9            a. A Court order declaring Defendant to have violated and to be in  
 10        violation of Section 301(a) of the CWA 33 U.S.C. § 1311(a) for its unlawful discharges  
 11        of pollutants from the Veridiam Facility in violation of the substantive and procedural  
 12        requirements of the Industrial Permit, and as of July 1, 2015, the New Industrial Permit;

13        b. A Court order enjoining the Defendant from violating the substantive  
 14        and procedural requirements of the New Industrial Permit;

15        c. A Court order assessing civil monetary penalties of \$37,500 per day  
 16        per violation for each violation of the CWA at the Veridiam Facility occurring since  
 17        January 27, 2010, as permitted by 33 U.S.C. § 1319(d) and Adjustment of Civil  
 18        Monetary Penalties for Inflation, 40 C.F.R. § 19.4;

19        d. A Court order requiring Defendant to take appropriate actions to  
 20        restore the quality of waters impaired by its activities;

21        e. A Court order awarding CERF its reasonable costs of suit, including  
 22        attorney, witness, expert, and consultant fees, as permitted by Section 505(d) of the  
 23        Clean Water Act, 33 U.S.C. § 1365(d);

24        /././

25        /././

26        /././

27        /././

28        /././

1 f. Any other relief as this Court may deem appropriate.

2 Dated: October 8, 2015

Respectfully submitted,

3 COAST LAW GROUP LLP

4  
5 By: s/Marco A. Gonzalez

MARCO A. GONZALEZ

6 Attorneys for Plaintiff

7 COASTAL ENVIRONMENTAL

RIGHTS FOUNDATION

8 E-mail: marco@coastlawgroup.com

# **EXHIBIT A**

**60 Day Notice Letter**



1140 S. Coast Hwy 101  
Encinitas, CA 92024  
Tel 760-942-8505  
Fax 760-942-8515  
www.coastlawgroup.com

January 27, 2015

Veridiam, Inc  
C/O Registered Agent  
818 West Seventh St 2<sup>nd</sup> FL  
Los Angeles, CA 90017

**VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Clerk of the Board of Supervisors  
1600 Pacific Highway, Room 402  
San Diego, California 92101

**Re: Notice of Violation and Intent to File Clean Water Act Citizens' Suit  
[33 U.S.C. § 1365] 60-Day Notice**

Dear Mr. Hollander and Clerk of the Board,

Please accept this letter on behalf of Coastal Environmental Rights Foundation ("CERF" or "Citizen Group") regarding violations of the Federal Water Pollution Control Act (Clean Water Act) occurring at the Veridiam Facility located at 1717 Cuyamaca St, El Cajon, CA 92020 (WDID No. 937I020299). This letter constitutes the CERF's notice of intent to sue for violations of the Clean Water Act and National Pollution Discharge Elimination System (NPDES) Permit No. CAS000001 (General Industrial Permit), as more fully set forth below.

Section 505(b) of the Clean Water Act requires that sixty (60) days prior to the initiation of a citizen's civil lawsuit in Federal District Court under section 505(a) of the Act, a citizen must give notice of the violations and the intent to sue to the violator and various agency officials. (33 U.S.C. § 1365(b)(1)(A)). In compliance with section 1365, this letter provides notice of the Veridiam Facility's violations and of CERF's intent to sue.

**I. BACKGROUND**

**A. The Veridiam Facility**

Veridiam, Inc owns and operates a facility located at 1717 Cuyamaca St, El Cajon, CA 92020 ("Veridiam Facility" or "Facility"). The Veridiam Facility has been in operation at this location since at least 2006. Veridiam conducts metal tubing, electrical discharge machining, electro chemical sharpening, swiss style turning, laser cutting, alloy fabrication, and other metal fabrication services. Veridiam, Inc leases the Facility from the County of San Diego.

The owners and operators of the aforementioned Facility operating at 1717 Cuyamaca Street, Veridiam, Inc and County of San Diego, are collectively referred to herein as the "Veridiam Facility Owners and/or Operators."

## **B. Storm Water Pollution From Industrial Facilities**

Storm water pollution results from materials and chemicals washed into the storm drains from streets, gutters, neighborhoods, industrial sites, parking lots and construction sites. This type of pollution is significant because storm water is often untreated and flows directly to receiving waters, including lakes, rivers, or ultimately the ocean. Storm water runoff associated with industrial facilities in particular has the potential to negatively impact receiving waters and contributes to the impairment of downstream water bodies. Industrial areas are known to result in excessive wet-weather storm water discharges, as well as contaminated dry weather entries into the storm drain system.<sup>1</sup>

Pollutants associated with Sector AA (Fabricated Metal Products) include total suspended solids, oil and grease, spent solvents, metals, paints, heavy metals, nitrates, gas and diesel fuel and fuel additives, and other pollutants. (See Exhibit A, Industrial Stormwater Fact Sheet, Sector AA).

## **C. Forester Creek, San Diego River, Pacific Ocean**

Forester Creek is on the 303(d) list as impaired for numerous constituents, including fecal coliform, selenium, total dissolved solids, and pH. The San Diego River is also impaired for numerous constituents, including toxicity.

## **D. Discharges From Veridiam Facility**

Polluted discharges from the Veridiam Facility flow into Forester Creek, a tributary to the San Diego River, and ultimately to the Pacific Ocean. The Facility has been enrolled under the General Industrial Permit since 2006. According to the most recent Annual Report, the Facility has four or five discharge locations to Forester Creek.

## **E. Citizen Group: Coastal Environmental Rights Foundation**

CERF is a California nonprofit public benefit corporation founded by surfers dedicated to the protection, preservation and enhancement of the environment, wildlife, natural resources, local marine waters and other coastal natural resources. CERF's interests are and will be adversely affected by the Veridiam Facility Owners and/or Operators' actions. CERF's mailing address is 1140 S. Coast Highway 101, Encinitas, CA 92024. Its telephone number is (760) 942-8505.

Members of CERF use and enjoy the waters into which pollutants from the Veridiam Facility's ongoing illegal activities are discharged, including Forester Creek, the San Diego River and the Pacific Ocean. The public and members of CERF use these receiving waters to fish, sail, boat, kayak, surf, stand-up paddle, swim, scuba dive, birdwatch, view wildlife, and to engage in scientific studies. The discharge of pollutants by the Veridiam Facility affects and impairs each of these uses. Thus, the interests of CERF's members have been, are being, and

---

<sup>1</sup> *Illicit Discharge Detection and Elimination: Technical Appendices*, Appendix K, Specific Considerations for Industrial Sources of Inappropriate Pollutant Entries to the Storm Drainage System (Adapted from Pitt, 2001)



Notice of Intent to Sue: Clean Water Act  
Veridiam—El Cajon  
January 27, 2015  
Page 3

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will continue to be adversely affected by the Veridiam Facility Owners and/or Operators' failure to comply with the Clean Water Act and the General Industrial Permit.

## **II. CLEAN WATER ACT VIOLATIONS**

The Clean Water Act (CWA) was amended in 1972 to provide that the discharge of pollutants to waters of the United States from any point source is effectively prohibited unless the discharge is in compliance with an NPDES permit. The 1987 amendments to the CWA added Section 402(p) that establishes a framework for regulating municipal and industrial storm water discharges under the NPDES Program. In 1990, US EPA published final regulations that require storm water associated with industrial activity that discharges either directly to surface waters or indirectly through municipal separate storm sewers be regulated by an NPDES permit. Any person who discharges storm water associated with industrial activities must comply with the terms of the General Industrial Permit in order to lawfully discharge pollutants. (33 U.S.C. §§1311(a), 1342; 40 CFR §126(c)(1); General Industrial Permit Fact Sheet, p. vii ["All facility operators filing an NOI after the adoption of this General Permit must comply with this General Permit."]).

As enrollees under the General Industrial Permit, the Veridiam Facility Owners and/or Operators have failed and continue to fail to comply with the General Industrial Permit, as detailed below. Failure to comply with the General Industrial Permit is a Clean Water Act violation. (General Industrial Permit, §C.1).

### **A. The Veridiam Facility Discharges Contaminated Storm Water in Violation of the General Industrial Permit**

Discharge Prohibition A(2) of the General Industrial Permit prohibits storm water discharges and authorized non-storm water discharges which cause or threaten to cause pollution, contamination, or nuisance. Receiving Water Limitation C(1) of the Storm Water Permit prohibits storm water discharges to surface or groundwater that adversely impact human health or the environment. In addition, receiving Water Limitation C(2) prohibits storm water discharges and authorized non-storm water discharges, which cause or contribute to an exceedance of any water quality standards, such as the CTR or applicable Basin Plan water quality standards. "The California Toxics Rule ("CTR"), 40 C.F.R. 131.38, is an applicable water quality standard." (*Baykeeper v. Kramer Metals, Inc.* (C.D.Cal. 2009) 619 F.Supp.2d 914, 926). "In sum, the CTR is a water quality standard in the General Permit, Receiving Water Limitation C(2). A permittee violates Receiving Water Limitation C(2) when it 'causes or contributes to an exceedance of' such a standard, including the CTR." (*Id.* at 927).

If a discharger violates Water Quality Standards, the General Industrial Permit and the Clean Water Act require that the discharger implement more stringent controls necessary to meet such Water Quality Standards.(General Industrial Permit, Fact Sheet p. viii; 33 U.S.C. § 1311(b)(1)(C)). The Veridiam Facility Owners and/or Operators have failed to comply with this requirement, routinely violating Water Quality Standards without implementing BMPs to achieve BAT/BCT or revising the Facility's SWPPP pursuant to section (C)(3).

As demonstrated by sample data submitted by the Veridiam Facility Owners and/or Operators, from at least January 27, 2010 through the present, the Facility Owners and/or

Notice of Intent to Sue: Clean Water Act  
 Veridiam—El Cajon  
 January 27, 2015  
 Page 4

Operators have discharged and continue to discharge storm water containing pollutants at levels in violation of the above listed prohibitions and limitations during every significant rain event. The Veridiam Facility's sampling data reflects 37 discharge violations. The Facility's own sampling data is not subject to impeachment. (*Baykeeper, supra*, 619 F.Supp. 2d at 927, citing *Sierra Club v. Union Oil Co. of Cal.*, (9th Cir. 1987) 813 F.2d 1480, 1492 ["when a permittee's reports indicate that the permittee has exceeded permit limitations, the permittee may not impeach its own reports by showing sampling error"]).

This data further demonstrates the Veridiam Facility continuously discharges contaminated storm water during rain events which have not been sampled. (See Exhibit B, Rainfall data). Samples highlighted in peach below indicate exceedances of the applicable EPA Multi-Sector General Permit benchmarks as well.<sup>2</sup>

Annual Sampling Data Veridiam				Applicable CTR Limit (mg/L) (freshwater)	
Violation No.	Date/time of sample collection	Parameter	Result (mg/L)	Maximum Conc.	Continuous Conc.
1	10/5/2012	Zinc Total	2.44	.120	.120
2	10/5/2011	Zinc Total	2.09	.120	.120
3	10/5/2011	Zinc Total	0.918	.120	.120
4	4/11/2012	Zinc Total	0.651	.120	.120
5	12/13/2012	Zinc Total	0.644	.120	.120
6	2/7/2014	Zinc Total	0.62	.120	.120
7	12/13/2012	Zinc Total	0.6	.120	.120
8	4/11/2012	Zinc Total	0.467	.120	.120
9	10/5/2011	Zinc Total	0.293	.120	.120
10	2/7/2014	Zinc Total	0.2	.120	.120
11	4/11/2012	Zinc Total	0.166	.120	.120

In addition, the sampling data reveals numerous exceedances of San Diego Basin Plan Water Quality Objectives.

Annual Sampling Data				
Violation No.	Date/time of sample collection	Parameter	Result (mg/L)	Basin Plan WQO (mg/L)
1	10/5/2011	pH	6.38	Not < 6.5 or > 8.5
2	10/5/2011	pH	6.2	Not < 6.5 or > 8.5
3	2/7/2014	pH	6.14	Not < 6.5 or > 8.5
4	12/13/2012	pH	6.06	Not < 6.5 or > 8.5
5	10/5/2011	pH	5.99	Not < 6.5 or > 8.5

<sup>2</sup> 2008 Storm Water Multi-Sector General Permit for Industrial Activities, Sector AA, Table 8.AA-1

Every day the Veridiam Facility Owners and/or Operators discharged or continue to discharge polluted storm water in violation of the Discharge Prohibitions and Receiving Water Limitations of the General Industrial Permit is a separate and distinct violation of the Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a). The Veridiam Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since January 27, 2010. These violations are ongoing and the Veridiam Facility Owners and/or Operators' violations will continue each day contaminated storm water is discharged in violation of the requirements of the General Industrial Permit. (See Exhibit B, Rainfall data). CERF will include additional violations when information becomes available.

**B. Failure to Develop and/or Implement BMPs that Achieve Compliance with Best Available Technology Economically Achievable and Best Conventional Pollutant Control Technology**

Effluent Limitation (B)(3) of the Storm Water Permit requires dischargers to reduce or prevent pollutants associated with industrial activity in storm water discharges and authorized non-storm water discharges through implementation of the Best Available Technology Economically Achievable (BAT) for toxic pollutants<sup>3</sup> and Best Conventional Pollutant Control Technology (BCT) for conventional pollutants.<sup>4</sup>

EPA Benchmarks are the pollutant concentrations which indicate whether a facility has successfully developed or implemented BMPs that meet the BAT/BCT. For fabricated metal products manufacturing facilities, Sector AA (SIC 3499), the EPA has instituted the following benchmarks.<sup>5</sup>

Parameter	Benchmark Monitoring Cutoff Concentration (mg/L)
Total Aluminum	.75
Total Iron	1.0
Total Zinc	.04-.26 (Hardness Dependent) .13 at 100-125 mg/L Water Hardness Range
Nitrate plus Nitrite Nitrogen	.68

Discharges with pollutant concentration levels above EPA Benchmarks and/or the CTR demonstrate that a facility has failed to develop and/or implement BMPs that achieve compliance with BAT for toxic pollutants and BCT for conventional pollutants. The Facility's annual reports demonstrate consistent exceedances of not only the CTR, but also EPA benchmarks.

<sup>3</sup> Toxic pollutants are found at 40 CFR § 401.15 and include, but are not limited to: lead, nickel, zinc, silver, selenium, copper, and chromium.

<sup>4</sup> Conventional pollutants are listed at 40 CFR § 401.16 and include biological oxygen demand, total suspended solids, pH, fecal coliform, and oil and grease.

<sup>5</sup> 2008 Storm Water Multi-Sector General Permit for Industrial Activities, Sector AA, Table 8.AA-1

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Violation No.	Date/time of sample collection	Parameter	Result (mg/L)	EPA Benchmark (mg/L)
1	10/5/2011	Aluminum	1.03	.75
2	10/5/2011	Aluminum	.89	.75
3	10/5/2011	Nitrate plus Nitrite Nitrogen	3.34	.68
4	10/5/2011	Nitrate plus Nitrite Nitrogen	2.6	.68
5	10/5/2011	Nitrate plus Nitrite Nitrogen	1.78	.68
6	12/13/2012	Nitrate plus Nitrite Nitrogen	1.73	.68
7	2/7/2014	Nitrate plus Nitrite Nitrogen	1.26	.68
8	2/7/2014	Nitrate plus Nitrite Nitrogen	0.88	.68
9	4/11/2012	Nitrate plus Nitrite Nitrogen	0.83	.68
10	4/11/2012	Nitrate plus Nitrite Nitrogen	0.7	.68

Thus, the storm water discharge sampling data demonstrates that the Veridiam Facility Owners and/or Operators have not developed and/or implemented BMPs that meet the standards of BAT/BCT. (See *Baykeeper, supra*, 619 F.Supp. 2d at 925 [“Repeated and/or significant exceedances of the Benchmark limitations should be relevant” to the determination of meeting BAT/BCT]).

Sources of pollutants at the Veridiam Facility include but are not limited to: parts and tool cleaning, sand blasting, metal surface cleaning, manufacture of metal components, cleanup of spills and drips, surface treatment, galvanizing, heavy equipment use and storage, equipment and vehicle maintenance, removal of applied chemicals, and storage of uncoated steel.

Pollutants associated with the Facility include but are not limited to: total suspended solids, oil and grease, spent solvents, metals, paints, heavy metals, nitrates, gas and diesel fuel and fuel additives, and other pollutants.

Despite repeated violations of the aforementioned metrics, the Facility BMPs have not been updated to ensure protection of water quality. Thus, the Facility Owners and/or Operators are seriously in violation of Effluent Limitation (B)(3) of the Storm Water Permit. Every day the Veridiam Facility Owners and/or Operators operate with inadequately developed and/or implemented BMPs in violation of the BAT/BCT requirements in the General Industrial Permit is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act. (33 U.S.C. § 1311 (a)). The Veridiam Owners and/or Operators have been in daily and continuous violation of the BAT/BCT requirements of the General Industrial Permit every day since at least January 27, 2010, and are subject to penalties for all violations since at least this date. These violations are ongoing and the Veridiam Facility Owners and/or Operators will continue to be in violation every day they fail to develop and/or implement BMPs that achieve BAT/BCT to prevent or reduce pollutants associated with industrial activity in storm water discharges at the Facility. Thus, the Veridiam Facility Owners and/or Operators are liable for civil penalties for 1,825 violations of the General Industrial Permit and the Clean Water Act.



**C. Failure to Develop and/or Implement an Adequate Storm Water Pollution Prevention Plan**

Section A(1) and Provision E(2) of the General Industrial Permit require dischargers to have developed and implemented a SWPPP by October 1, 1992, or prior to beginning industrial activities, that meets all of the requirements of the Storm Water Permit. The objective behind the SWPPP requirements is to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges from the Veridiam Facility, and implement site-specific BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges. (General Industrial Permit, Section A(2)). To ensure its effectiveness, the SWPPP must be evaluated on an annual basis pursuant to the requirements of Section A(9), and must be revised as necessary to ensure compliance with the Permit. (General Industrial Permit, Section A(9), (10)).

City of El Cajon storm water consultant inspections of the Veridiam Facility, as well as sampling data from storm water discharges at the Facility, which are set forth in detail above, indicate that the Veridiam Facility Owners and/or Operators have not developed or implemented an adequate SWPPP that meets the requirements of Section A of the General Industrial Permit. Indeed, historical photographs and inspections show a variety of materials, including components and metal materials, stored without cover or containment. (See Exhibit C, [Inspection Reports Detailing Need for Corrective Action]).

For over five years the Veridiam Facility has been exceeding water quality standards: the Basin Plan objectives, the CTR, and EPA benchmarks. Nonetheless, the SWPPP has not been updated with new BMPs. The SWPPP also requires the aforementioned evaluations be submitted with the Annual Reports, but, on information available to CERF, such evaluations have not been submitted with the Annual Reports.

Every day the Veridiam Facility Owners and/or Operators operate the Facility without an adequate SWPPP and/or with an inadequately developed and/or implemented SWPPP is a separate and distinct violation of the General Industrial Permit and Section 301(a) of the Clean Water Act. (33 U.S.C. § 1311(a)). The Veridiam Facility Owners and/or Operators have been in daily and continuous violation of the General Industrial Permit's SWPPP requirements every day since at least January 27, 2010. These violations are ongoing and the Veridiam Facility Owners and/or Operators will continue to be in violation every day they fail to revise, develop, and/or implement an adequate SWPPP for the Veridiam Facility.

The Veridiam Facility Owners and/or Operators are thus subject to penalties for all SWPPP-related violations of the General Industrial Permit and the Clean Water Act occurring since at least January 27, 2010. Thus, the Veridiam Facility Owners and/or Operators are liable for civil penalties for 1,825 violations of the General Industrial Permit and the Act.

**E. Failure to Monitor**

Sections B(5) and (7) of the General Industrial Permit require dischargers to visually observe and collect samples of storm water discharged from all locations where storm water is discharged. Facility operators, including the Veridiam Facility Owners and/or Operators, are required to collect samples from at least two qualifying storm events each wet season, including



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one set of samples during the first storm event of the wet season. Required samples must be collected by Facility operators from all discharge points and during the first hour of the storm water discharge from the Facility.

The Veridiam Facility Owners and/or Operators failed to sample two storm events as required for the 2009-2010, 2012-2013, and 2013-2014 wet seasons, despite the fact that there were numerous qualifying rain events during these wet seasons. (See Exhibit B). The Veridiam Facility Owners and/or Operators are thus subject to penalties for these monitoring violations in accordance with the General Industrial Permit – punishable by a minimum of \$37,500 per day of violation. (33 U.S.C. §1319(d); 40 CFR 19.4).

### **III. REMEDIES**

CERF's action will seek all remedies available under the Clean Water Act. (33 U.S.C. § 1365(a)(d)). "In suits under Section 505 of the Clean Water Act, citizens have access to the same remedies available to the EPA." (*Student Public Interest Research Group, Inc. v. Georgia-Pacific Corp.*, 615 F. Supp. 1419, 1425 (D.N.J. 1985), citing *Middlesex County Sewerage Auth. v. Nat'l Sea Clammers Ass'n*, 453 U.S. 1, 13-14 (1981)). Pursuant to Section 309(d) of the Clean Water Act and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Clean Water Act subjects the violator to a penalty of up to \$37,500 per day for all violations occurring during the period commencing five years prior to the date upon which this notice is served.

In addition to civil penalties, CERF will seek injunctive relief preventing further violations of the Clean Water Act pursuant to sections 505(a) and (d), declaratory relief, and such other relief as permitted by law. Section 505(d) of the Clean Water Act permits prevailing parties to recover costs, including attorneys' and experts' fees. CERF will seek to recover all of their costs and fees pursuant to section 505(d).

CERF has retained legal counsel to represent them in this matter. All communications should be addressed to:

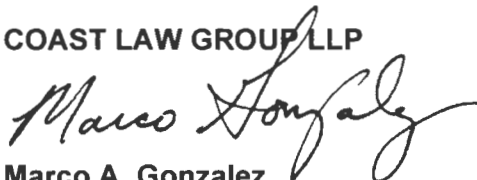
**Marco A. Gonzalez**  
**COAST LAW GROUP LLP**  
**1140 S. Coast Highway 101**  
**Encinitas, CA 92024**  
**Tel: (760) 942-8505 x 102**  
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**Email: marco@coastlawgroup.com**

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Upon expiration of the 60-day notice period, CERF will file a citizen suit under Section 505(a) of the Clean Water Act for the above-referenced prior, continuing, and anticipated violations. During the 60-day notice period, however, CERF will entertain settlement discussions. If you wish to pursue such discussions in the absence of litigation, please contact Coast Law Group LLP immediately.

Sincerely,

**COAST LAW GROUP LLP**



**Marco A. Gonzalez**



**Livia Borak**

Attorneys for  
 Coastal Environmental Rights Foundation

CC:

<b>Jared Blumenfeld, Region 9 Administrator</b> <b>Alexis Strauss, Deputy Regional Administrator</b> <b>U.S. EPA, Region 9</b> <b>75 Hawthorne Street</b> <b>San Francisco, CA, 94105</b>	<b>Dave Gibson, Executive Officer</b> <b>Catherine Hagan, Staff Counsel</b> <b>San Diego Regional Water Quality Control Board</b> <b>2375 Northside Drive, Suite 100</b> <b>San Diego, CA 92108-2700</b>
<b>Gina McCarthy</b> <b>EPA Administrator</b> <b>Mail Code 4101M</b> <b>US EPA Ariel Rios Building (AR)</b> <b>1200 Pennsylvania Avenue N.W.</b> <b>Washington, DC 20004</b>	<b>Thomas Howard</b> <b>Executive Director</b> <b>State Water Resources Control Board</b> <b>P.O. Box 100</b> <b>Sacramento, CA 95812-0110</b>
<b>Office of County Counsel</b> <b>County Administration Center</b> <b>1600 Pacific Highway, Room 355</b> <b>San Diego, CA 92101</b>	

#### **Index of Attachments**

Exhibit A. Industrial Stormwater Fact Sheet, Sector AA  
 Exhibit B. Rainfall Data  
 Exhibit C. City of El Cajon (DMAX) Site Inspections